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c 41 The Hamilton-Wentworth Municipal Hydro-Electric Service Act, 1980

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CHAPTER 41

An Act to provide for Municipal Hydro-Electric Service in The Regional Municipality of Hamilton-Wentworth

Assented to June 19th, 1980

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

- (a) "accumulated net retail equity" means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) "area municipality" means the municipality or corporation of the Town of Ancaster, the Town of Dundas, the Town of Stoney Creek, the Township of Flamborough and the Township of Glanbrook;
- (c) "Minister" means the Minister of Intergovernmental Affairs;
- (d) "municipal commission" means a hydro-electric commission or public utilities commission entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area within the meaning of *The Regional Municipality of Hamilton-Wentworth Act, 1973* immediately before the coming into force of this Act and established or deemed to be established under Part III of *The Public Utilities Act*; 1973, c. 74
R.S.O. 1970,
c. 390
- (e) "power" means electrical power and includes electrical energy;
- (f) "regulations" means the regulations made under this Act;

- (g) "retail", when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts, but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions
established

2.—(1) On the day this Act comes into force, a hydro-electric commission for each of the towns of Ancaster, Dundas and Stoney Creek and the Township of Flamborough is hereby established.

Application
of
R.S.O. 1970,
c. 390, 354

(2) Each commission established by subsection 1 shall be deemed to be a commission established under Part III of *The Public Utilities Act* and a municipal commission within the meaning of *The Power Corporation Act*.

Names of
commissions

(3) Each commission established by subsection 1 shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Ancaster Hydro-Electric Commission.
2. Dundas Hydro-Electric Commission.
3. Flamborough Hydro-Electric Commission.
4. Stoney Creek Hydro-Electric Commission.

Composition

1977, c. 62

(4) Each commission established by subsection 1 shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under *The Municipal Elections Act, 1977* in the area municipality.

When area
municipality
may deter-
mine size of
commission

(5) Except as otherwise provided in this Act, the council of each area municipality shall determine by by-law whether the number of additional members of the commission established by subsection 1 in respect of the area municipality shall be two or four.

First
commission,
Ancaster

(6) For the term expiring with the 30th day of November, 1982, the Ancaster Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Town of Ancaster and the following additional members who shall be appointed by the council of the Town of Ancaster:

1. Two members of the Public Utilities Commission of the Township of Ancaster as it existed immediately before the coming into force of this Act.

2. Two persons who reside outside the part of the Town of Ancaster supplied with power by a municipal commission immediately before the coming into force of this Act.

(7) For the term expiring with the 30th day of November, 1982, the Dundas Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Town of Dundas and the following additional members who shall be appointed by the council of the Town of Dundas: First commission, Dundas

1. Three members of the Dundas Public Utilities Commission as it existed immediately before the coming into force of this Act.
2. One person who resides outside the part of the Town of Dundas supplied with power by a municipal commission immediately before the coming into force of this Act.

(8) For the term expiring with the 30th day of November, 1982, the Flamborough Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Township of Flamborough and the following additional members who shall be appointed by the council of the Township of Flamborough: First commission, Flamborough

1. One member of the Public Utilities Commission of the Village of Waterdown as it existed immediately before the coming into force of this Act.
2. One member of the Lynden Hydro-Electric Commission as it existed immediately before the coming into force of this Act.
3. Two persons who reside outside the part of the Township of Flamborough supplied with power by a municipal commission immediately before the coming into force of this Act.

(9) For the term expiring with the 30th day of November, 1982, the Stoney Creek Hydro-Electric Commission established by subsection 1 shall consist of the mayor of the Town of Stoney Creek and the following additional members who shall be appointed by the council of the Town of Stoney Creek: First commission, Stoney Creek

1. Two members of the Hydro-Electric Commission of the Town of Stoney Creek as it existed immediately before the coming into force of this Act.
2. Two persons who reside outside the part of the Town of Stoney Creek supplied with power by a municipal com-

mission immediately before the coming into force of this Act.

Additional
members
of first
commission

1977, c. 62

(10) Where this section provides that one or more members of a municipal commission are to be additional members for a term specified by this section and the number of such members who are qualified electors under *The Municipal Elections Act, 1977* is less than the required number of additional members, the council of the area municipality in respect of which the commission was established under subsection 1 shall appoint an additional member or additional members so that there will be the required number of additional members of the corporation.

Subsequent
additional
members

(11) For terms commencing after the 30th day of November, 1982, the additional members of each commission established by subsection 1 shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1982 the council of the area municipality provides by by-law that the additional members shall be appointed by the council.

Eligibility
of members
of council

(12) Members of the council of the area municipality served by a commission established by subsection 1 may be members of the commission, but the members of the council shall not form a majority of the commission.

Term of
office

(13) Subject to subsections 6 to 9, a member of a commission established by subsection 1 shall hold office for the same term as the members of council or until his successor is elected or appointed.

Delegates

(14) The council of an area municipality served by a commission established by subsection 1 may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Salary
of first
commissions

1973, c. 74

(15) The salaries of the members of the commissions established by subsection 1 for the term expiring with the 30th day of November, 1982 shall be fixed on or before the 1st day of October, 1980 in an amount that does not exceed the highest salary paid to members of the municipal commissions operating in the Regional Area within the meaning of *The Regional Municipality of Hamilton-Wentworth Act, 1973* on the 1st day of January, 1980.

Resignations

(16) A resignation from the council of an area municipality of a member of the council who is a member of a commission established by subsection 1 shall be deemed to be a resignation from both the council and the commission.

Powers of
commissions
R.S.O. 1970,
c. 390

3.—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by *The Public*

Utilities Act on a municipal corporation with respect to power shall, on and after the 1st day of January, 1981, be exercised on behalf of each area municipality by the commission established by section 2 in respect of the area municipality and not by the council of any municipality or any other person.

(2) Subject to sections 5 and 6, on and after the 1st day of January, 1981, each commission established by section 2 has the sole right to distribute and supply power within the area municipality in respect of which it is established.

Right to
distribute
and supply
power

(3) The right of a commission established by section 2 to distribute and supply power is subject to any subsisting contracts for the supply of power made under section 70 of *The Power Corporation Act*.

Subsisting
contracts

(4) A commission established by section 2 may contract with Ontario Hydro without electoral assent or other approval or authorization for the transmission and supply to the commission of power to be distributed and sold in the area municipality served by the commission.

Contract
with
Ontario
Hydro

(5) A contract under subsection 4 shall be deemed to be an agreement within the meaning of clause s of subsection 2 of section 293 of *The Municipal Act*.

Idem

R.S.O. 1970,
c. 284

(6) Except where inconsistent with the provisions of this Act, the provisions of *The Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to the commissions established by section 2.

Application of
R.S.O. 1970,
c. 354

(7) With the consent of a commission established by section 2, Ontario Hydro may distribute and supply power directly to customers in the area municipality in respect of which the commission is established.

Direct
customers

4.—(1) The council of the Township of Glanbrook, with the consent of Ontario Hydro, may establish by by-law a hydro-electric commission for the Township of Glanbrook and, commencing on the date that the council shall specify in the by-law, the commission shall distribute and supply power in all of the Township of Glanbrook.

Establish-
ment of
commission
by by-law in
Glanbrook

(2) The commission established under subsection 1 shall be known as the Glanbrook Hydro-Electric Commission.

Name of
commission

(3) The commission established under subsection 1,

Composition

R.S.O. 1970,
c. 35(1), 354

(a) shall be deemed to be a commission established under Part III of *The Public Utilities Act* and a municipal commission within the meaning of *The Power Corporation Act*; and

1977, c. 62

(b) shall consist of the mayor of the Township of Glanbrook and additional members who are qualified electors under *The Municipal Elections Act, 1977* in the Township of Glanbrook.

First
additional
members

(4) The council of the Township of Glanbrook shall appoint the first additional members of the commission established under subsection 1,

Subsequent
additional
members

(5) For terms after the first term, the additional members of the commission shall be elected by a general vote of the electors of the area municipality unless, before the completion of the first term of office of the members of the commission, the council of the Township of Glanbrook provides by by-law that the additional members shall be appointed by the council.

Application
of other
sections
of Act

(6) Upon the establishment of a commission under subsection 1,

(a) subsections 5, 12, 13, 14 and 16 of section 2, section 3, subsection 2 of section 6 and sections 8 to 12 shall apply with necessary modifications and, for the purpose, the dates mentioned therein shall be deemed to be the dates that shall be specified in the by-law mentioned in subsection 1; and

(b) the commission, for the purposes of clause *a*, shall be deemed to be a commission established by section 2.

Review of
distribution
and supply
of power

(7) Until such time as the power conferred by subsection 1 has been exercised,

(a) the council of the Township of Glanbrook shall review the distribution and supply of power within the area municipality at least once in every three years, and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection 1; and

(b) where the council determines as provided in clause *a* that it is financially feasible, the council shall exercise the power conferred by subsection 1.

5.—(1) The council of each of the Town of Ancaster and the Township of Flamborough, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,

Supply of power in all areas of municipalities of Ancaster, Flamborough

- (a) may direct the commission established by section 2 in respect of the municipality to commence on a day specified by the by-law the distribution and supply of power in all areas of the municipality and on the specified day sections 8 and 12 shall apply with necessary modifications to the assets and employees of Ontario Hydro in the municipality; or
- (b) may dissolve the commission established by section 2 in respect of the municipality on a day specified by the by-law and on the specified day,
 - (i) all assets under the control and management of and all liabilities of the commission, and all debentures issued in respect of the distribution and supply of power in the municipality are, without compensation, assets and liabilities of Ontario Hydro, and
 - (ii) Ontario Hydro shall commence to distribute and supply power in all areas of the municipality.

(2) Until such time as the power conferred by subsection 1 has been exercised,

Review of distribution and supply of power

- (a) the council of each of the Town of Ancaster and the Township of Flamborough shall review the distribution and supply of power within their respective municipalities at least once in every three years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection 1; and
- (b) where the council of the Town of Ancaster or the Township of Flamborough determines as provided in clause *a* that it is financially feasible for the commission established under section 2 in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by subsection 1.

(3) The Flamborough Hydro-Electric Commission established by section 2 shall distribute and supply power to those customers in the Town of Ancaster to whom the Lynden Hydro-Electric Commission is distributing and supplying power as of the 31st day of December, 1980 until either,

Flamborough Hydro-Electric Commission, additional duty

(a) the Ancaster Hydro-Electric Commission established by section 2 commences to distribute and supply power in all areas of the Town of Ancaster; or

(b) the Flamborough Hydro-Electric Commission established by section 2 is dissolved,

as provided in subsection 1.

Where
Ontario
Hydro to
distribute
and supply
power

6.—(1) Ontario Hydro shall continue to distribute and supply power in those areas of the Town of Ancaster and the townships of Flamborough and Glanbrook that Ontario Hydro served immediately before the coming into force of this Act.

Termination
of duty to
distribute
and supply
power

(2) The duty of Ontario Hydro under subsection 1 to distribute and supply power in an area municipality is terminated, on the date specified in the by-law, by a by-law passed with the consent of Ontario Hydro by the council of the area municipality under subsection 1 of section 4 or clause *a* of subsection 1 of section 5.

Assets and
employees

(3) Sections 8 and 12 do not apply in respect of the assets and employees of Ontario Hydro in an area municipality until the passing of the by-law referred to in subsection 2.

Transfer of
assets and
liabilities

7.—(1) On the 1st day of January, 1981, all assets under the control and management of and all liabilities of the municipal commissions in each area municipality are, without compensation, assets under the control and management of and liabilities of the commission established by section 2 in respect of the area municipality.

Transitional

(2) Any of the assets, powers and responsibilities of the municipal commissions in an area municipality that pertain to the distribution and supply of power in the area municipality may be transferred by agreement before the 1st day of January, 1981 to the commission established by section 2 in respect of the area municipality.

Purchase
of retail
distribution
facilities
from
Ontario
Hydro

8.—(1) On or before the 1st day of January, 1981, each commission established by section 2 shall purchase, on behalf of the area municipality served by the commission, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the area municipality.

Leased
equipment

(2) The purchases mentioned in subsection 1 shall include equipment leased by Ontario Hydro to retail customers in the area municipalities for the use of power supplied to the retail customers.

(3) The purchase price shall be determined in accordance with the regulations and shall be equal to the original cost of the assets less the sum of,

Purchase price

- (a) the accumulated net retail equity of the customers supplied with power through the assets; and
- (b) the accumulated depreciation associated with the assets.

9.—(1) In this section, “parties” means Ontario Hydro and, in each case, the commission established by section 2.

Interpretation

(2) If the purchase price under section 8 is not determined before the 1st day of January, 1982, either of the parties at any time thereafter may request that the purchase price be determined by a single arbitrator agreed on by the parties.

Where price to be determined by arbitration

(3) *The Arbitrations Act* applies where a request is made under subsection 2.

Application of R.S.O. 1970, c. 25

10.—(1) All real property transferred by section 7 to the control and management of a commission established by section 2 or otherwise acquired by or for the commission shall be held by the commission in trust for the area municipality served by the commission.

Vesting of real property

(2) Where a commission established by section 2 is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the commission and the area municipality served by the commission, the real property may be disposed of as follows:

Disposition of real property

1. In the event that the area municipality served by the commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the commission for the real property at its actual cost, less accrued depreciation as shown on the books of the commission or the assessed value of the real property, whichever is the greater, and when the municipality in good faith no longer wishes to use the real property for a municipal purpose, the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the commission does not wish to use the real property in accordance with paragraph 1, the commission shall, as soon as practicable, sell, lease or otherwise dispose of the real

property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor under this subsection shall be received by the commission and shall be applied in accordance with *The Public Utilities Act*.

R.S.O. 1970,
c. 389

Borrowing
1973, c. 74

11. Except as otherwise provided in this Act, sections 92 to 113 of *The Regional Municipality of Hamilton-Wentworth Act, 1973* apply, with necessary modifications, to any borrowing for the purposes of a commission established by section 2.

Interpre-
tation

12.—(1) In this section, “transfer date”, when used in respect of an employee of a municipal commission or Ontario Hydro, means the date on which a commission established by section 2 assumes liability for the payment of the wages or salary of the employee.

Transfer of
employees

(2) On or before the 31st day of December, 1980, Ontario Hydro and each municipal commission that supplied power in an area municipality immediately before the coming into force of this Act shall designate those of their full-time employees who were employed in the distribution and supply of power in an area municipality on the 1st day of January, 1980, and who continued such employment until the 31st day of December, 1980 or until their transfer dates, as the case may be, and each commission established by section 2 shall offer employment to the employees designated in respect of the area municipality served by the commission.

Wages or
salaries

(3) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary he was receiving on the day nine months before the transfer date.

Participation
in O.M.E.R.S.

(4) Each commission established by section 2 shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Act comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on his transfer date, and *The Ontario Municipal Employees Retirement System Act* applies to such person as a member of the System.

R.S.O. 1970,
c. 324

Supple-
mentary
agreements

(5) When a person who accepts employment under this section with a commission established by section 2 is entitled immediately before this transfer date to the benefit of a supplementary agreement between the Ontario Municipal Employees Retirement Board and a municipal commission that, immediately before the

coming into force of this Act, supplied power in an area municipality mentioned in subsection 1 of section 2, the commission established by section 2 shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the commission had been a party to the agreement in the place of the municipal commission

(6) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before his transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Transfer of
pension credits
from
Ontario
Hydro Plan

(7) Notwithstanding subsection 4, a person who accepts employment under this section with a commission established by section 2 and who,

Pension
guarantee

- (a) was employed by Ontario Hydro immediately before his transfer date; and
- (b) continues in the employment of a municipal hydro-electric commission until he or his beneficiary becomes entitled to a pension benefit,

is entitled to at least the pension benefit he would have been entitled to under The Ontario Hydro Pension and Insurance Plan if his years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1980, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection 4 shall be apportioned and paid as provided by the regulations.

(8) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with his former employer until the effective date of a common group life insurance plan covering all eligible employees of his new employer.

Group life
insurance

Item

(9) On or before the 31st day of December, 1982, each commission established by section 2 shall provide a common group life insurance plan covering all of the eligible employees of the commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before his transfer date.

Sick leave

(10) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlements or sick leave insurance provided by his former employer immediately before the transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits.

Life insurance provided to pensioners

(11) Each commission established by section 2 shall continue the provision of life insurance to pensioners formerly employed by a municipal commission in the distribution and supply of power in the area municipality served by the commission established by section 2.

Termination for cause

(12) Nothing in this section prevents an employer from terminating the employment of an employee for cause.

Special circumstances

(13) Where, in the opinion of the Minister, a person who is designated or who accepts employment under this section experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.

Dissolution of existing commissions 1973, c. 74

13.—(1) For the purposes of section 135 of *The Regional Municipality of Hamilton-Wentworth Act, 1973* and except in respect of Hamilton Hydro-Electric Commission, the 1st day of January, 1981 is the date determined and the date designated by the Minister in respect of the Regional Area within the meaning of *The Regional Municipality of Hamilton-Wentworth Act, 1973*, and on that date the municipal commissions, other than Hamilton Hydro-Electric Commission, supplying only electrical power and energy in that area immediately before the coming into force of this Act are dissolved and any by-laws establishing them passed under sections 38 and 40 of *The Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.

R.S.O. 1970, c. 390

Hamilton Hydro-Electric Commission

(2) On and after the day this Act comes into force, section 135 of *The Regional Municipality of Hamilton-Wentworth Act, 1973* does not apply to Hamilton Hydro-Electric Commission and

that Commission is no longer a local board and is a commission to which Part III of *The Public Utilities Act* applies.

R.S.O. 1970,
c. 390

14. The Lieutenant Governor in Council may make regulations, Regulations

(a) for the purpose of subsection 3 of section 8 in respect of,

- (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
- (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,
- (iii) the method of determining the amount of any component of the accumulated net retail equity,
- (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
- (v) the method of calculating accumulated depreciation of any component of accumulated depreciation,
- (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
- (vii) the method of payment of the price of the assets;

(b) for the purposes of subsection 7 of section 12, in respect of the apportionment of the excess cost of any benefit referred to in the subsection and the payment of the excess cost or any part thereof.

15. This Act comes into force on the day it receives Royal Commence-
ment
Assent.

16. The short title of this Act is *The Hamilton-Wentworth* Short title
Municipal Hydro-Electric Service Act, 1980.

